

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

(Oakland, California)

GENERAL CHEMICAL CORPORATION,

Employer,

and

Case 32-RC-4859

INTERNATIONAL CHEMICAL WORKERS
UNION COUNCIL, UNITED FOOD AND
COMMERCIAL WORKERS, AFL-CIO

Petitioner.

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, including the parties' briefs and arguments made at the hearing, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in the business of manufacturing chemical solvents at its facility in Hollister, California. During the previous twelve months, the Employer has sold and shipped products valued in excess of \$50,000 directly to

customers located outside the State of California. Accordingly, I find that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. The Petitioner seeks to represent a unit, herein called the Unit, consisting of all full time and regular part time employees of the Quality Control Laboratory at the Employer's Hollister, California facility, excluding guards and supervisors as defined under the Act. A question affecting commerce exists concerning the representation of certain of these employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Petitioner contends that three individuals in the Quality Control Laboratory who hold the job classification of "lab technician," and who are jointly employed by a temporary agency and the Employer, should be included in the Unit.

6. Although the Employer concedes that the lab technicians supplied by the temporary agency are jointly employed by the Employer, it contends that the jointly employed lab technicians should not be included in the Unit.

7. The Employer contends that George Garrison, who is the methods chemist in the Quality Control Laboratory, should be included in the Unit.

8. The Petitioner contends that Garrison should be excluded from the Unit because he is a supervisor, manager or professional employee.

9. The Employer contends that the employees in the Research and Development Laboratory and all but one of the employees in the Quality Control

Laboratory are professional employees, and that the employees in the Research and Development Laboratory share a community of interest with the proposed Unit and should be included in the Unit.

10. The Petitioner contends that the employees in the proposed unit are not professional employees and that the Research and Development Laboratory employees should be excluded from the unit because they lack a sufficient community of interest with the other members of the proposed unit.

THE FACTS

The Employer has various operations throughout the United States, including the Electronic Chemicals Group, which consists of two facilities. The facility at issue in this case is located in Hollister, California, and the other Electronic Chemicals Group facility is located in Bay Point, California. The facility in Hollister produces organic solvents/chemicals, primarily for the semi-conductor and disc drive industries, and includes a manufacturing plant and two laboratories. The laboratories are called the Quality Control Laboratory, herein called the “QC Lab” and the Research and Development Laboratory, herein called the “R&D Lab”. The two laboratories are located in separate buildings, which are about 200 feet apart. The QC Lab’s primary function is to run various tests to ascertain whether certain chemicals reach the requisite levels of purity. The R&D Lab, on the other hand, is engaged in developing and testing new products. The R&D Lab became part of the Employer’s operation when it acquired a research enterprise in calendar year 2000. According to the Employer’s organizational chart, the Electronic Chemicals Group has six separate departments, and each

department has its own Director. The QC Lab is under the control of the Director of Technology, Erik Mori, as is the quality control laboratory at the Bay Point, California facility. The R&D Lab is under the Director of Product Development, J. C. Moore. Both Moore and Mori report to the General Manager of the Electronic Chemicals Group.

The QC Lab is under the direction of Edgar Feria, the QC Lab manager. Feria directs the work of the employees, determines their schedules and vacations, approves overtime and grants employees time off. He effectively recommends the hiring of employees and has the authority to discipline employees. Feria also assists employees when they need to determine what caused a tested chemical not to meet the expected level of purity. He is a salaried employee and as such he also has a somewhat better benefits package. Salaried employees get a health club matching funds reimbursement benefit and have a better temporary disability plan benefit.

The QC Lab also has a methods chemist, George Garrison. Garrison, who had previously been a senior lab technician in the QC Lab, was promoted to the position of methods chemist in December, 2000. He has a bachelor's degree in chemistry and has received additional specialized training from the Employer and from other entities. Garrison's primary function as a methods chemist is to develop new analytical methods and testing protocols. When needed, he does still perform some lab tests, particularly some of the most complicated tests, and he is responsible for training the QC Lab technicians when they are first hired and when they need to learn new techniques or how to operate new equipment. As noted above, Garrison sometimes assists employees in determining why a test showed that a chemical did not meet the requisite level of purity. Finally, he does some maintenance/repair work on the testing

equipment. Garrsion receives a salary of about \$5,000 a month, and, like Feria, he receives the salaried employee benefits package.

There are currently five lab technicians working in the QC Lab. Three of these five are supplied to the Employer through one or more temporary agencies. They are Charles Derringer, Jason Vinson, and Truong Le. The other two lab technicians, Rose Najar and Duong Vu, are permanent employees of the Employer. The lab technicians all run pre-determined tests on chemicals purchased by the Employer and on the chemicals produced by the Employer. Some of these tests involve numerous steps, and the Employer's two permanent lab technicians are able to run some tests and equipment that the other lab technicians have not yet learned. The analysis of the tests the lab technicians run is primarily performed by computers. If a chemical fails to meet the requisite level of purity, the lab technician follows an established protocol of re-testing the chemical. If, after the re-testing, an Employer product still does not meet the requisite level of purity, the lab technician, usually in conjunction with the lab manager or methods chemist, will try to determine whether there was some reason why the test procedure may have provided an inaccurate result. The QC Lab technicians also complete appropriate records of their tests and maintain the work area.

The temporary and permanent lab technicians have the same job title, and they wear the same uniforms. The Employer holds separate employee meetings for the staff of the QC Lab and for the staff of the R&D Lab. The QC Lab technicians work overlapping shifts, between 4:30 A.M. and 10:00 P.M. The differences in their shifts is unrelated to whether they are temporary or permanent employees of the Employer. The QC Lab employees, with the exception of George Garrison, are paid an hourly wage.

Najar receives about \$15.25 per hour and Vu receives about \$16.50 an hour. They also receive the Employer's hourly worker benefits package. Unlike Garrison, Feria and the R&D Lab personnel, the QC Lab technicians receive overtime pay, and often earn between \$225 and \$450 each pay period in overtime pay. The QC lab technicians who are supplied to the Employer by a temporary agency are paid directly by the temporary agency and do not receive the Employer's benefits package.

In order to fill a lab technician vacancy in the QC Lab, the Employer places its own advertisements in periodicals and on web sites, and it solicits the services of a temporary agency. Because of the tight labor market in this field, most recent hires have been arranged through a temporary agency. The Employer's practice is to notify the agency of the vacancy and the desired qualifications. For the job classification of lab technician, one of the Employer's stated qualifications is that the applicant possess a bachelor's degree. Despite including this qualification in its job postings for this position, two of the temporary employees currently working as lab technicians do not in fact possess bachelor's degrees.

The temporary agency forwards resumes of individuals to be considered for the positions. The Employer interviews candidates whom it deems to be suitable. The Employer also makes the final determination of which of the individuals proposed by the agency will be hired. The agency is wholly responsible for determining the rate of pay and other benefits to be provided to the temporary worker. The Employer is responsible for setting the working conditions and responsibilities of the employees and for assigning and directing their work. If the Employer is dissatisfied with the work of a temporary employee, the Employer may simply inform the temporary agency not to

send that individual any longer. The Employer may choose to offer permanent employment to an individual originally working through a temporary agency. The Employer states that it would wait until a temporary employee has been working with the Employer for at least six months before offering the employee permanent employment. By waiting six months, the Employer would avoid having to pay the temporary agency a large placement fee. In the event the Employer decides not to offer permanent employment to a temporary employee after six months, the temporary employee does not automatically cease working for the Employer. In fact, there is no limitation on how long a temporary employee may work for the Employer. At least one of the temporary lab technicians has been employed by the Employer for about nine months.

The QC Lab also includes a lab clerk, Norma Carey. The parties have stipulated that Ms Carey should be included in the Unit. Ms Carey is an hourly paid employee, who receives about \$12.25 per hour. She also receives the same hourly paid employees benefits package that the permanent lab technicians receive.

The R&D Lab consists of three individuals: John Moore, the Director of Product Development; Arsenio Regalia, the R&D Manager; and Alex Smith, a chemist. Moore has overall authority regarding the R&D Lab employees. He also determines what projects the R&D Lab will pursue and who will be assigned to which project. Regalia, like Moore and Smith, is a chemist. Despite his title, there is no evidence that Regalia has any supervisory or managerial authority. Smith was formerly employed as a lab technician in the QC Lab but was promoted to the R&D Lab position when the Employer created the R&D Lab in calendar year 2000.

The primary function of the R&D Lab personnel is to develop solutions to problems raised by the Employer's customers and to develop new products. Therefore, unlike the employees of the QC Lab, Regalia and Smith interact with the Employer's customers, and they travel to trade shows where they perform demonstrations to potential customers. Once they are given a project, Regalia and Smith have to exercise discretion in developing a hypothesis regarding what combination of chemicals and/or what procedures might solve the customer's problem or might lead to the development of the new product. Then they have to create tests that will help them determine whether their hypotheses were correct and/or that will help them refine or modify their original hypotheses. In carrying out their assignments, the R&D Lab personnel perform bench chemistry as well as computer tests and analysis. In order to engage in the kind of creative thinking their job requires, the R&D Lab personnel must also spend a significant amount of time keeping current with the applicable professional literature in their field.

The two labs are equipped with somewhat different technology that is suited to their distinct functions. Because they have different equipment, the R&D Lab employees will occasionally need to have the QC Lab employees run tests on products being developed by the R&D Lab. Although such requests are normally brought to the QC Lab manager, it appears that on some occasions, the R&D personnel deal directly with employees in the QC Lab. Employees in one lab do not fill in for employees in the other lab who are absent due to vacations or illness.

The R&D Lab employees wear different uniforms than the QC Lab employees and are scheduled to work on one shift, from about 7:00 A.M. to about 4:00 P.M.

Depending on the project they are working on, they will often work additional hours. As salaried employees, they do not earn overtime for performing that work. Regalia's salary is about \$5800 per month and Smith's salary is about \$4000 a month. Smith and Regalia also receive the Employer's salaried employees benefits package.

ANALYSIS

TEMPORARY EMPLOYEES

The Board's recent decision in *M.B. Sturgis*, 332 NLRB No. 173 (2000) elaborates and expands upon the circumstances in which employees jointly employed by a temporary agency and a company that has contracted with the temporary agency may appropriately be included in a bargaining unit along with the company's permanent employees. The Board held that traditional community of interest factors shall be applied in determining whether a unit consisting of both temporary and permanent employees is appropriate. *Id.*

The evidence in this case establishes, and the Employer does not dispute, that the Employer and the temporary agency that supplies the three temporary employees jointly employ these employees. Rather, the Employer argues that permitting the temporary employees to be included in the Unit is inappropriate because they lack a community of interest with the permanent employees. Alternatively, the Employer argues that even if the temporary employees are found to share a community of interest with the permanent employees, the two temporary employees who lack bachelor's degrees should be excluded from the Unit because they have no possibility of securing permanent employment with the Employer.

The evidence establishes that the temporary employees share a community of interest with the permanent employees such that inclusion in the Unit is appropriate. The temporary employees work side by side with the permanent employees and share common work functions and supervision with the permanent lab technicians. The Employer assigns and monitors the work of all the technicians in the same manner. The temporary employees work similar hours, have the same job classification and wear the same type of uniforms as the permanent lab technicians. Finally, unless the temporary employees' work is unsatisfactory, they will work for the Employer at least six months before becoming a permanent employee, and the temporary employees who do not become permanent employees after six months continue to work for the Employer for an indefinite duration. Thus, there is strong evidence of a shared community of interest among the employees in the QC Lab. See *Lodigan, Inc.*, 332 NLRB No. 128 (2000).

The parties do not dispute that the wages and benefits of the temporary employees in the QC Lab differ from those of the permanent employees, and that the temporary agency sets the wages and benefits of the temporary lab technicians. While this is significant factor in the determination of the Employer's potential bargaining obligations towards these employees, it is insufficient to establish that the temporary employees lack a community of interest with the permanent employees given the substantial evidence to the contrary. See *Sturgis, supra*; *Interstate Warehousing of Ohio*, 333 NLRB No. 83 (2001).

The Employer also argues that two of the temporary employees will never be offered permanent employment because they lack the educational requirement of the

position, and, therefore, even if there is evidence supporting a finding of a community of interest between the permanent and temporary lab technicians, these two employees would not share in that community of interest and should be excluded. This argument is unpersuasive for several reasons. First, the Employer's requirement that QC Lab technicians have a bachelor's degree purportedly applies to temporary employees as well as to permanent employees. As two of the three temporary employees do not have a bachelor's degree, the Employer is currently demonstrating the flexibility to depart from this degree policy regarding the temporary employees and, given the difficult labor market, might vary from the policy again in the future when deciding whether to elevate a temporary employee to permanent status. Second, temporary lab technicians may complete their degrees and thus actually qualify for permanent employment. Third, as noted above, the Employer does not limit the term of employment of the temporary employees, even the temporary employees who do not have a bachelor's degree. In fact, one of the current temporary employees without a bachelor's degree has worked for the Employer for about nine months. Moreover, the Board does not limit bargaining units to only those employees who are highly likely to remain employed with an employer. Thus in a somewhat analogous situation involving probationary employees, the Board held that the employees' expectation of permanent employment is not diminished by the fact that proportionately few complete probation. *Johnson's Auto Spring Service*, 221 NLRB 809 (1975). Similarly, the Board has held that medical interns and graduate students are employees, despite the fact that their employment is for a limited duration and few are offered permanent position with their employer at the end of their program. *Boston Medical Center*, 330 NLRB No. 30 (1999); and *New York*

University, 331 NLRB No. 111 (2000). Therefore, regardless of the temporary employees' prospects for permanent employment, *Sturgis* simply does not require that the temporary employees be in line for permanent employment in order to be appropriately included in the Unit. On the contrary, *Sturgis* acknowledges the rights of long-term temporary employees to partake of the protections of the Act.

In sum, as required in *Sturgis*, the evidence establishes that the temporary and permanent QC Lab technicians have a sufficient community of interest. Accordingly, I direct that the temporary lab technicians are part of the Unit.¹

GEORGE GARRISON

The Petitioner contends that methods chemist George Garrison should be excluded from the Unit as a supervisor, manager or professional employee. The party asserting that an individual is a supervisor under the Act bears the burden of proving his supervisory status. *Bennett Industries, Inc.*, 313 NLRB 1363 (1994); *Tuscon Gas and Electric Co.*, 241 NLRB 181, 181 (1979).

The Employer contends that he lacks the indicia of supervisory authority under Section 2(11) of the Act, that is, he has no authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline, responsibly direct or adjust the grievances of other employees.

The Employer did not provide a written job description for Garrison's job classification, and Garrison's role and duties as the methods chemist are still not well

¹ The Petitioner has chosen not to include the temporary agency in these proceedings. Thus, if the Petitioner ultimately prevails in securing representation of the Unit, the Employer's duty to bargain extends only to the terms and conditions of employment over which it has control. The temporary agency will have no duty to bargain with Petitioner and will not itself be bound by any collective bargaining agreement entered into between the parties. See *Interstate Warehousing*

defined. During the approximately four months between Garrison's promotion and the date of the hearing in this case, the Employer did not hire or fire any employees in the QC Lab, so it is unclear what role Garrison will eventually play in such decisions. Although Garrison has on one occasion recommended discipline of one of the QC Lab technicians, this recommendation was made during a conversation in which other employees were present, and Feria was fully and independently aware of the employee conduct at issue. Moreover, the evidence is not clear regarding what Garrison had specifically recommended, and there is evidence that other employees had also recommended to Feria that he discipline the employee in question. Thus, this one instance is insufficient to establish that Garrison had the authority to effectively recommend that employees be disciplined. Similarly, there is evidence that on one occasion Garrison recommended that an individual be promoted. However, Garrison's recommendation was not adopted by the Employer.

No evidence was presented to support a finding that Garrison has any authority to transfer, suspend, or reward employees. Garrison has, on occasion, attended management meetings, especially in Feria's absence. The Employer concedes that Garrison "fills in" for lab manager Feria in his absence. No evidence was presented regarding the scope of his authority on these occasions. Regardless, occasional substitution for a supervisor does not by itself establish supervisory status. See *The Bakersfield Californian*, 313 NLRB 1211, 1219 (1995).

Rosary Najar, one of the QC Lab technicians, testified that Garrison had informed some of the staff that they should approach him regarding any problems in the

of Ohio, 333 NLRB No. 83 (2001); *Professional Facilities Management*, 332 NLRB No. 40 (2000).

lab. This conversation occurred one week prior to the hearing, right after a staff meeting in which it appears that Garrison's supervisory authority was not addressed, and during a conversation about an employee's questionable test results. Garrison explained that when the employees had previously complained about another employee's test result problem to Feria, Feria had reprimanded or complained to Garrison about the problem. In that context, it is not clear what Garrison's statement meant as to the type of problems he wanted them to raise with him. Najar later testified that Garrison had also asked if they knew that the majority of Feria's authority would be transferred to him. According to Najar, Garrison then told the employees that any problems they may have in the lab, any problems they may have, they should come to Garrison, because Feria was giving up that responsibility to him. Finally, Najar admitted that the scope of Garrison's authority was unclear because the Employer had not indicated what new authority Garrison had been given, and she was still more likely to turn to Feria than to Garrison if a problem arose.

The evidence as a whole regarding the conversation described by Najar is somewhat vague and unclear, and consists solely of Garrison's own statements regarding his new authority, rather than any statements by Feria. There are also no clear examples of Garrison's exercise of such authority.² I find the record does not demonstrate that Garrison has the authority, in the interests of the Employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline employees, or responsibly to direct them, or to adjust their grievances, or effectively to

² Najar indicated that at some point she had spoken with Garrison to get permission for time off. There is insufficient evidence regarding their interaction to determine whether Garrison granted her request immediately and on his own authority, or whether he did so based on the exercise of discretion.

recommend such action in a manner that is not merely routine but requires independent judgment.³

The Petitioner suggests in the alternative that Garrison should be excluded from the Unit as a managerial employee. The Board defines managerial employees as “those who formulate and effectuate management policies by expressing and making operative the decisions of their employer, and those who have discretion in the performance of their jobs independent of their employer's established policy.” *General Dynamics Corp.*, 213 NLRB 851, 857 (1974). “Managerial status is not conferred upon rank-and-file workers, or upon those who perform routinely, but rather is reserved for those in executive-type positions, those who are closely aligned with management as true representatives of management.” *Id.* The record does not support a finding that Garrison exercises managerial authority. To the contrary, Garrison has no role in the development of the Employer’s policies nor does he have any discretion to deviate from them. Accordingly, I find that Garrison shall not be excluded from the Unit as a managerial employee.

The evidence does establish that Garrison is a professional within the meaning of Section 2(12) of the Act. Garrison has a bachelor’s degree in biological sciences from the University of California, Davis. He is engaged in work which is intellectual and varied in character, involves the consistent exercise of discretion and judgment in its performance, requires advanced knowledge and training, and is of such a character that the results cannot be standardized in relation to a given period of time. See *Avco*

³ Neither party seeks to include QC Lab manager Edgar Feria. Feria has the authority to determine employee schedules and vacations, to assign and approve overtime and to grants employees time off. He effectively recommends the hiring of employees and has the authority to discipline employees. I find that he is a supervisor within the meaning of Section 2(11) of the

Corp/Textron Lycoming Division, 313 NLRB 1357 (1994). Garrison does not typically run the same established lab tests performed by the QC Lab technicians. Instead, he is primarily responsible for troubleshooting and developing new tests and protocols. He also trains the lab technicians on how to do new procedures and how to operate new equipment. Only if there is no one else available to perform an actual lab test does Garrison perform the work of the lab technicians. Garrison has also received extensive specialized training that the lab technicians have not received.

Although Garrison does not possess a post graduate degree, this does not preclude a finding that he is a professional. *Id.* Garrison has received additional specialized training and performs work significantly more intellectual and varied in character and requiring more independent judgment than the work performed by the lab technicians. I therefore find that Garrison is a professional employee.

With regard to the QC Lab technicians, only three of the five have bachelor's degrees, and they receive training from the Employer regarding its tests, procedures and equipment. Although the lab technicians have specialized skills and exercise some independent judgment in carrying out their duties, it appears that the bulk of their work is carrying out pre-determined tests and procedures from which they may not vary. Moreover, in most instances they are reporting the readings from the computer's analysis of the tests. When the lab technicians are required to determine why the test results indicated that a chemical failed a purity test, the lab technicians first follow an established protocol and then typically consult with the lab manager or methods chemist to decide on what further steps should be taken to determine what caused the chemical not to pass the test. Under these circumstances as a whole, and particularly because

Act and that he is excluded from the Unit.

the work they perform is primarily pre-determined by the Employer and they may not vary from those pre-determined procedures based on the exercise of their own discretion, I find that the QC Lab technicians are not professional employees. See *Hazeltan Laboratories, Inc.*, 136 NLRB 1609, 1610-11 (1962).

As Garrison has been found to be a professional employee, and the Petitioner is not seeking to represent professional employees, Garrison is excluded from the unit. See *DIFCO Labs, Inc.*, 129 NLRB 887 (1960). I also note that, absent a showing of interest among professional employees, a self-determination election of professional employees is unwarranted. See *Continental Can Co.*, 128 NLRB 762 (1960). In the instant case, the Petitioner has not provided a showing of interest among professional employees. Accordingly, I direct that professional employees, including Garrison, shall be excluded from the Unit.

R&D Lab

Similarly, I conclude that the R&D Lab manager and chemist are professional employees. Like Garrison, they have bachelor's degrees in chemistry or related sciences and additional specialized training. They independently develop new hypotheses in order to solve customer problems and develop new products, and they develop new tests and protocols to test the validity of their hypotheses. Like Garrison, they are not primarily running predetermined tests from which they may not vary based on their own exercise of discretion. Thus their work is of a highly intellectual nature and frequently requires a great deal of independent judgment. *Id.* As they are professional employees, I find that they are also excluded from the Unit.⁴

⁴ Neither party has argued that the Director of Product Development should be included in the Unit. As he exercises the same or greater level of independent discretion and intellectual skills

Even if the R&D Manager and chemist were not professional employees, I would not include them in the Unit. Section 9(a) of the Act requires that the Unit sought be an appropriate unit; the Petitioner is not required to seek representation of the most inclusive possible unit. See *Overnite Transportation Co.*, 322 NLRB 723 (1996). As described above, the evidence demonstrates that the QC Lab employees share a strong community of interest. Even if inclusion of the R&D employees in the Unit might also form an appropriate unit, the Petitioner is not required to seek representation of a larger unit unless the smaller unit sought is inappropriate. *Id.*

The record also establishes that the R&D Lab employees have a sufficiently distinct community of interest from the QC Lab employees. The R&D Lab was acquired by the Employer subsequent to the QC Lab; therefore, the departments are historically discrete, and they are under different chains of command in the Employer's organizational chart. The employees of the two laboratories work in separate buildings, under separate supervision. They attend separate staff meetings. They use different equipment and wear different uniforms. The R&D Lab employees are salaried, while the QC Lab employees, other than Garrison, are hourly paid employees. As salaried employees they also enjoy somewhat higher remuneration from the Employer than do the hourly paid employees.

as do the R&D manager and chemist, I conclude that the Director of Product Development is also a professional employee. Although the evidence of his specific authority is somewhat limited, it appears that he schedules employee vacations and grants employees time off based on his own authority. It also appears that he exercises discretion in deciding what new products the Employer will attempt to develop and which employee will work on which project. Therefore, I conclude that the Director of Product Development is also a supervisor within the meaning of Section 2(11) of the Act and that he is a manager. *General Dynamics Corp.*, 213 NLRB 851, 857 (1974). For each of these reasons, he is excluded from the Unit.

More significantly, the evidence shows that the R&D Lab employees engage in significantly different work than do QC Lab employees. R&D Lab work is more intellectual and varied, whereas QC Lab work is more routine and less discretionary. There is only minimal interaction between the two departments. QC Lab technician Najjar testified that there have been fewer than ten occasions in the last six months in which an R&D Lab employee came into the QC Lab to perform a test using the QC Lab equipment or to request that a QC Lab employee perform the test for the R&D Lab. Significantly, the employees of the two laboratories do not fill in for each other or assist each other in the case of employee absence or excessive workload. Although one R&D Lab employee originally worked in the QC Lab, there is no evidence that QC Lab employees are routinely promoted or transferred into the R&D Lab.

Because the Employer has failed to show that the employees of the two laboratories have such a strong shared community of interest that a separate QC Lab unit would not be appropriate, and because, as noted above, I find that they are professional employees not sought to be included by the petitioner, I direct that the R&D Lab employees are excluded from the Unit.

Accordingly, I shall direct an election among the following employees:

All full time and regular part time employees of the Quality Control Laboratory, including employees who are supplied by a temporary agency, employed by the Employer at its facility in Hollister, California; excluding professional employees, guards and supervisors as defined in the Act.

There are approximately 6 employees in the voting unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the voting unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.⁵ Eligible to vote are those in the voting unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military service of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented by INTERNATIONAL CHEMICAL WORKERS UNION COUNCIL, UNITED FOOD AND COMMERCIAL WORKERS, AFL-CIO.

⁵ Please read the attached notice requiring that election notices be posted at least three (3) days prior to the election.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, 361 fn. 17 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before May 2, 2001. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by May 9, 2001.

Dated at Oakland California this 25th day of April, 2001.

/s/ James S. Scott
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